IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 31ST MAY 2007 / 10TH JYAISHTA 1929

WP(C).No. 23916 of 2004(V)

OS.293/2000 OF I ADDL.SUB COURT,ERNAKULAM

.....

PETITIONER:

V.J.PAULOSE, S/O.JACOB,
VAISAMPARAMBIL HOUSE, KARICODE DESOM,
MULANTHURUTHY VILLAGE, KANAYANNUR TALUK,
ERNAKULAM DISTRICT.

BY ADV. SRI.T.K.KOSHY.

RESPONDENT:

P.P.BABY, S/O.PAILY,
PARANAL HOUSE, PERUMPILLY KARA,
MULANTHURUTHY VILLAGE,KANAYANNUR TALUK,
ERNAKULAM DISTRICT.

BY ADV. SRI.K.SURENDRA MOHAN.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 31/05/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C). NO.23916/2004:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE APPLICATION DTD. 09/01/2004 FOR JOINT TRIAL I.E. I.A. NO. 245/2004 FILED BY THE RESPONDENT IN O.S. NO. 293/2000 BEFORE THE IST ADDL. SUB COURT, ERNAKULAM.

EXT.P.2: COPY OF THE COUNTER AFFIDAVIT DTD. 09/03/2002 FILED BY PETITIONER TO EXT.P.1. APPLICATION IN O.S. NO. 293/2000 BEFORE THE IST ADDL. SUB COURT, ERNAKULAM.

//TRUE COPY//

prv.

K.K. DENESAN, J.

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W.P.(C) No. 23916 OF 2004 V
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Dated this the 31st May, 2007

J U D G M E N T

This writ petition is preferred to quash the order passed in I.A. No. 245/2004 in O.S. No. 293/2000. O.S. No. 293/2000 is a suit filed by the writ petitioner against one P.P. Baby for specific performance of a contract alleging that the property was agreed to be sold for a consideration of Rs. 2 lakhs. One Anil also has filed a suit for specific performance against the very same P.P. Baby for the very same property setting up an agreement to sell the property for a consideration of Rs.6,50,000/-. Both suits are now before the Ist Additional Sub Court, Ernakulam, for trial. Meanwhile, the defendant moved an application for joint trial and the court permitted the joint trial. It is against that decision the plaintiff in O.S. No. 293/2000 has come up with the writ petition. It is seen that the subject matter involved in both the suits is the very same property and the plaintiffs in O.S. No. 293 of 2000 and O.S. No. 308 of 2000 have claimed specific performance of alleged agreements

executed by the defendant in the cases in favour of them. So, it is absolutely necessary that the controversy has to be resolved by one and the same court by jointly trying the matter. Otherwise there will be divergent findings and unexecutable decrees. Therefore, I find that the court below has considered the matter in the correct perspective and ordered joint trial. Therefore, the writ petition lacks merits and it is dismissed. Since the plaintiffs in both the suits are not parties in the other suit sufficient opportunity must be given to them to contest the case and permit them to cross-examine the witnesses on the veracity, genuineness and truthfulness of the documents on which they rely to get a decree for specific performance. Though the plaintiff in O.S. No. 308/2000 is not impleaded in the writ petition, he is represented by a counsel and he is also heard in the matter. With these observations writ petition is dismissed.

M.N. KRISHNAN
JUDGE

jan/